

**Jason L. Kafoury (OSB #091200)
Mark McDougal (OSB #890869)
Kafoury & McDougal
411 SW Second Avenue, Suite 200
Portland, OR 97204
(503) 224-2647
Fax: (503) 224-2673
jkafoury@kafourymcdougal.com
mcdougal@kafourymcdougal.com
Attorneys for Plaintiff**

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

JAMES M. CLEAVENGER,
Plaintiff,
vs.
CAROLYN McDERMED, BRANDON
LEBRECHT, and SCOTT CAMERON,
Defendants.

Case No. 6:13-cv-01908-DOC

**DECLARATION OF JASON KAFOURY IN
SUPPORT OF MOTION TO EXTEND
MOTION REPLY DEADLINES**

I, JASON KAFOURY, declare under penalty of perjury as follows:

1. This declaration is based upon my personal knowledge.

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2. Attached hereto as Exhibit 1 is a true and correct copy of email correspondence between defense counsel and me concerning Plaintiff's Motion to Extend Motion Reply Deadlines.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated: November 24, 2015.

/s/ *Jason Kafoury*
JASON KAFOURY, OSB #091200

Jason Kafoury

From: Andrea Coit <Andrea.COIT@harrang.com>
Sent: Tuesday, November 24, 2015 10:51 AM
To: Jason Kafoury; Mark McDougal; Adam Kiel
Cc: Pamela Peake; Jonathan Hood; David Hess; Ginger Fullerton
Subject: RE: Need to request extension on new trial motion, the court reporter had a car accident

Jason - you have the entire trial in roughs. That is what we worked with to file our motions because we could not wait on Jill to finish the finals. We will substitute in citations to the finals when received. There is no reason you cannot do the same thing. I am not agreeing to over a month extension, or any extension. This happens with every deadline that comes up, always allowing you additional time. This deadline was pending well before yesterday when you realized you did not have the transcripts. So just fyi, we will file an opposition to your motion for extension.

There is no reason to abate the state court case. You made the call on when to file that lawsuit. There is a judgment now entered in the federal court. That judgment bars the state court case. If the judgment is vacated and new trial ordered, there still remains another action pending. Unless you dismiss the federal action, you cannot proceed under any of the circumstances currently being presented to the court. So no, I don't agree to abate the state court case.

Jonathan and I have a two week trial starting Jan 4, so we are busy with trial prep too.

Andrea

From: Jason Kafoury [mailto:jkafoury@kafourymcdougal.com]
Sent: Tuesday, November 24, 2015 10:37 AM
To: Andrea Coit; Mark McDougal; Adam Kiel
Cc: Pamela Peake; Jonathan Hood; David Hess
Subject: RE: Need to request extension on new trial motion, the court reporter had a car accident

Andrea/Jonathan, I just tried you back but you are both out of the office today. Pamela I left you a VM.

Here is where things stand, I got an email from the court reporter below this morning saying she will need a couple weeks to finish Cleavenger's testimony in final (which we need to respond to your economic damage argument) and a month or so to get whole trial done. In light of the fact we don't have a hearing until February, I would like to move the court to file our responsive documents December 29th which will still give more than a month to reply. We also have a wrongful death trial down in Medford Dec. 14-18th so we will be tied up in early December with trial prep. Please let us know if you are OK w/us moving the court for this extension.

Also, let us know where you stand on our proposal to abate the state case until we get the rulings on your new trial motion. Thanks so much

Jason

From: Jill Jessup [mailto:jjessupreporting@gmail.com]
Sent: Tuesday, November 24, 2015 9:24 AM
To: David Hess <hess@kafourymcdougal.com>
Subject: Re: Checking in on your recovery

Good morning, David,

I sincerely apologize for my inability to get these to you sooner! I was released from the hospital on Friday and am still in a slow recovery mode. These are the transcripts that I had already prepared to final, so I'll send these now and get started on the other two witnesses. The two witnesses I will need to have some time to prepare would be Linda King and James Cleavenger. I know Mr. Cleavenger was on the stand for a couple of days, so I'm thinking I'll need at least a couple of weeks to get his testimony finalized.

Also, I am finalizing the entire trial, and I should be able to have that finished within a month. The full final transcript is what I will file on CM/ECF so that the pagination is sequential for each day.

I will send the transcripts of Linda King and James Cleavenger as soon as I can.

Thank you for your patience!

Jill

Jason Kafoury
Kafoury & McDougal
411 SW 2nd Ave
Suite 200
Portland OR 97204
Ph: 503.224.2647
Fax: 503.224.2673

From: Jason Kafoury

Sent: Monday, November 23, 2015 2:23 PM

To: 'Andrea Coit' <Andrea.COIT@harrang.com>; Mark McDougal <mcdougal@kafourymcdougal.com>; Adam Kiel <Kiel@kafourymcdougal.com>

Cc: Pamela Peake <Pamela.PEAKE@harrang.com>; Jonathan Hood <Jonathan.Hood@harrang.com>; David Hess <hess@kafourymcdougal.com>

Subject: RE: Need to request extension on new trial motion, the court reporter had a car accident

Hey Andrea & Jonathan,

I just left Jonathan a VM on this, we requested weeks back from Jill the court reporter final transcripts we needed to respond to your new trial motion and our understanding is that Jill was in a serious car accident and we haven't heard back from her on the final transcripts yet so we need to file another extension w/the court. Jill told us that you had filed some rough transcripts in your original motion for a new trial and then your client had ordered the whole transcript from her afterwards because she didn't want roughs being filed so if you got a copy of the final transcripts you could send our way that would help expedite things while we wait to hear about Jill's condition.

Also on the state law case, since the legal issues are inter-related with whether you get a new trial motion granted I'm proposing we move the state court for a 3 month abatement until we get final rulings from the Federal Court. Let me know if you are OK with that and we'll draft the paperwork for Lane County.

I'm going into a meeting but if one of you could call or email me with a time to confer on these that would be great,
Jason

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Kafoury & McDougal

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